

DOCKET NO.: 2007-19 : SUPERIOR COURT
IN THE MATTER OF A : J. D. OF HARTFORD
COMPLAINT AGAINST : AT HARTFORD
JAMES R. MARTIN : FEBRUARY 19, 2009

MEMORANDUM OF DECISION

- I -

On January 22, 2009 a confidential hearing was held to determine whether there was probable cause that James Martin, the respondent, violated general statutes § 1-84 b (f) by accepting employment with DaSilva Architects of New York City within one year of his resignation from his State position. At the hearing, held pursuant to the complaint of Office of State Ethics, dated July 24, 2007 that office submitted eighteen documents in evidence and produced one witness and Respondent submitted three documents in evidence and produced one witness. Post hearing briefs were submitted dated February 5 and 6, 2009.

General statutes § 1-84 b (f) reads in pertinent part as follows:

(f) No former public official or state employee (1) who participated substantially in the negotiation or award of (A) a state contract valued at an amount of fifty thousand dollars or more or (B) (2) who supervised the negotiation or award of such a contract or agreement; shall accept employment with a party to the contract or agreement other than the state for a period of one year after his resignation from his state office or position if his resignation occurs less than one year after the contract or agreement is signed.

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It was alleged and admitted that the Respondent was a State employee at the University of Connecticut Health Center from November 25, 2005 until February 15, 2007; that he participated in some ways in the award of a contract of DaSilva; that the contract exceeded \$50,000; that Respondent accepted employment within one year after he left employment with the State on February 15, 2007.

Respondent contests however whether he "participated substantially" in the negotiations or award of the DaSilva contract.

Evidence introduced at the hearing showed that Respondent, a licensed architect was employed at the Health Center between November 25, 2005 and February 15, 2007 as Assistant Director - Campus Planning; that he was a member of the Dental Implant Selection Committee which awarded a consultant contract to DaSilva at a meeting on May 2, 2007 at which he was present (Exhibit 2); that on June 16, 2007 DaSilva wrote to Respondent thanking him for the award of the contracts it received totaling \$147,240 (Exhibit 3); that on May 16, 2007, respondent personally notified other applicants of the DaSilva selection (Exhibit 4); that one June 26, 2006 a DaSilva official wrote to Respondent containing a proposal to prepare a Master Plan for the project involved (Exhibit 6).

The job description for Assistant Director (Exhibit 8) makes it clear that the negotiation with and selection of contractors falls under the scope of that position, which in fact was held by Respondent. On October 9, 2005, prior to job commencement, Respondent acknowledged receipt of a copy of the State Ethics Commission Guide to the Code of Ethics for Public Officials and State Employees (Exhibit 9) calling attention to the statutes involved.

All this evidence makes it abundantly clear that Respondent participated substantially in the negotiation and award of the contract with DaSilva and that probable cause has been established that Respondent violated general statutes § 1-84 b (f) by accepting employment with DaSilva within a short time of the termination of his State employment from the State.

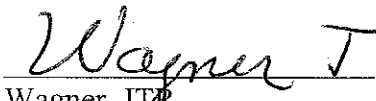
- II -

In his post hearing memorandum, Respondent claims that the statute applies to an employee who negotiates with a contractor, then contacts the contracting party and then resigns to join the contractor. This argument relies on the wording in the statute "one year after resignation" and claims that Respondent did not voluntarily resign but was forced to resign; thereafter DaSilva sought him out, "not the other way around".

There is no authority to substantiate the claim that the resignation referred to in the statute must be voluntary. Such an interpretation is not justified by anything in the statute and is refuted by at least three advisory opinions.

- Advisory Opinion 1996-13, 58 Conn. L. J. No. 7, p. 4D (July 12, 1996)
- Advisory Opinion 1993-5, 54 Conn. L. J. No. 45, p. 2E (May 11, 1993)
- Advisory Opinion 1991-9, 52 Conn. L. J. No. 46, p. 3C (May 14, 1991)

See also AO 1993-5, 54 Conn. L. J. No. 45, p. 2E, all of which consider § 1-84 b (f) applicable "even when a public official or state employee does not leave voluntarily."


Wagner, JTR